

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case Nos.: <b>07-O-14773-PEM</b>
	)	<b>(08-O-14437);</b>
	)	<b>11-O-10784 (Cons.)</b>
<b>ALLAN CARROLL MILES,</b>	)	
	)	<b>DECISION AND ORDER SEALING</b>
<b>Member No. 118191,</b>	)	<b>CERTAIN DOCUMENTS</b>
	)	
<u>A Member of the State Bar.</u>	)	

INTRODUCTION

Respondent **Allan Carroll Miles** was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). As the court has now found that respondent has successfully completed the ADP, IT IS ORDERED that respondent be publicly reprimanded and be subject to specified conditions attached to the public reprimand for three years.

PERTINENT PROCEDURAL HISTORY

Following the filing of a Notice of Disciplinary Charges in case nos. 07-O-14773 (08-O-14437) against respondent by the State Bar of California's Office of the Chief Trial Counsel (State Bar) on August 21, 2009, respondent requested referral for evaluation of his eligibility for participation in the State Bar Court's ADP. The request was granted and this matter was referred to the ADP.

Respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist him with his substance abuse issues and signed a LAP Participation Plan on February 10, 2011.

Respondent also submitted a declaration to the court which established a nexus between respondent's substance abuse issues and his misconduct in this matter.

A Stipulation Re Facts and Conclusions of Law was lodged with the court on March 29, 2009. A First Amended Stipulation was lodged on July 9, 2012, after an additional disciplinary matter was filed.<sup>1</sup> The Stipulation and First Amended Stipulation set forth the factual findings, legal conclusions and mitigating and aggravating circumstances in this matter.

Following briefing, the court issued a Confidential Statement of Alternative Dispositions and Orders, lodged on March 29, 2010, and, later, an Amended Confidential Statement, lodged on July 9, 2012, formally advising the parties of (1) the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and (2) the discipline which would be recommended if respondent failed to successfully complete, or was terminated from, the ADP. After agreeing to those alternative possible dispositions, respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP, lodged on March 29, 2010 and, later, an Amended Contract and Waiver, lodged on July 9, 2012. The court accepted respondent for participation in the ADP and respondent's period of participation in the ADP began on February 14, 2011.

On June 19, 2013, LAP issued respondent a One-Year Certificate of Participation in the program and noting that respondent had satisfied all lab testing requirements in his Participation Plan/Agreement for one year prior to the date the certificate was issued; that no unauthorized substances had been detected; and that LAP was unaware of respondent's use of any unauthorized substances during that period.

On July 8, 2013, the court issued an order finding that respondent successfully completed the ADP.

---

<sup>1</sup> All of the disciplinary matters eventually were consolidated.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The parties' Stipulation and First Amended Stipulation, including the court's orders approving same, are attached hereto and hereby incorporated by reference, as if fully set forth herein. Respondent and the State Bar stipulated to the following violations in three client matters: Section 6068, subdivisions (i) and (m) (two and three counts, respectively); and Rules of Professional Conduct, rule 3-700(D)(2) (one count).

Aggravating factors included one 2003 public reproof for violations of section 6068, subdivision (m) and rule 3-700(D)(2) in State Bar Court case no. 01-O-05017; client harm; and multiple acts of misconduct. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)<sup>2</sup> The parties did not agree to any mitigating factors.

At the time respondent engaged in his misconduct, he was suffering from substance abuse issues, and respondent's substance abuse issues directly caused or contributed to the misconduct which forms the basis for this proceeding. Supreme Court case law establishes that an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.)

Respondent participated successfully in both the LAP and the State Bar Court's ADP. Respondent's successful completion of the ADP and successful participation in LAP qualify as clear and convincing evidence that respondent no longer suffers from the substance abuse issues which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful

---

<sup>2</sup> All further references to standard(s) or std. are to this source.

completion of the ADP as a mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

## **DISCUSSION**

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, preserve public confidence in the legal profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if respondent successfully completed the ADP or was terminated from, or failed to successfully complete, the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. In particular, the court considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 2.6 and 2.10.

Because respondent has now successfully completed the ADP, this court, in turn, now orders the imposition of the lower level of discipline, set forth more fully below, contained in the Confidential Statement.

## **DISCIPLINE**

### **Public Reproval**

IT IS ORDERED that respondent **Allan Carroll Miles**, State Bar Number 118191, be publicly reproved. Pursuant to the provisions of rule 5.127(a) of the Rules of Procedure of the State Bar of California (Rules of Procedure), the public reproval will be effective when this decision becomes final.

Further, pursuant to rule 9.19(a) of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the following specified conditions being attached to the public reproval

imposed in this matter. Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for wilful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California (Rules of Professional Conduct).

Accordingly, respondent is hereby ordered to comply with the following conditions attached to the public reproof for a period of three years following the effective date of the public reproof imposed in this matter:

1. During the probation/reproof period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
2. Within 10 days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
3. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation/reproof. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation/reproof, respondent must promptly meet with the probation deputy as directed and upon request;
4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation/reproof. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation/reproof during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the period of probation/reproof and no later than the last day of the probation/reproof period;

5. Subject to assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation/reproof conditions;

6. Within one year after the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
7. Unless respondent has been terminated from the Lawyer Assistance Program (LAP) prior to respondent's successful completion of LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with LAP and must provide an appropriate waiver authorizing LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed LAP, respondent need not comply with this condition.
8. Respondent must abstain from use of any alcoholic beverages and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana or associated paraphernalia except with a valid prescription.

#### **Costs**

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. It is further ordered that costs be paid with respondent's membership fees for the year 2014. If respondent fails to pay costs as described above, or as may be modified by the State Bar Court, costs are due and payable immediately.

#### **DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS**

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388(c) (former rule 806(c)) of the Rules of Procedure of the State Bar of California (Rules of Procedure),<sup>3</sup> all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 (former rule 23) of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to:

---

<sup>3</sup> The new Rules of Procedure became effective on January 1, 2011.

(1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosures. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

**IT IS SO ORDERED.**

Dated: October \_\_\_\_\_, 2013

---

PAT McELROY  
Judge of the State Bar Court